

REMARKS

The Final Office Action dated June 10, 2005 has been carefully considered. The present Amendment After Final Rejection is intended to be a complete response and to place the case in condition for allowance.

Claims 1 – 20, 22, 27 and 30-32 are pending the application. Claim 1 has been amended to include the recitals of the original claim 7 and to recite the shape of the pouches. Claim 7 has been cancelled. Claims 8 and 11 have been amended to depend from claim 1. Claim 32 has been amended to clarify the orientation of the pouches. New claim 33, which includes the recitals of previous claim 1, has been added. Support for the amendments can be found, *inter alia*, in the specification on page 4, lines 19-21, page 5, line 17 through page 6 line 18 and Figures 5 – 10.

In the Action, the Examiner rejected claims 1-20, 22, 27, 30-32 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner rejected claim 32 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner rejected claims 1-16, 22, 27, 30-32 under 35 U.S.C. § 103(a) as being obvious over Kaufman (U.S. Patent No. 2,835,596) in view of Davy (U.S. Patent No. 3,199,756). The Examiner rejected claims 17-20 under 35 U.S.C. § 103(a) as being obvious over Kaufman and Davy and further in view of Warp (U.S. Patent No. 3,194,124). The Examiner acknowledged receipt of the certified copies of the priority documents from the International Bureau.

Claims 1-20, 22, 27, 30-32 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the examiner contends that the phrase “wherein ... pattern.” in the last four lines of claim 1 is new matter.

Claim 1 has been amended to remove this phrase. As such, Applicant respectfully contends that the new matter rejection of claim 1 is now moot. In any event, as new claim 33, which contains the recitals of previous claim 1, has been added, Applicant respectfully traverses the § 112, first paragraph, rejection. The Examiner's attention is directed to the third paragraph of page 5 of the specification, where it is disclosed that brick shaped pouches may be folded for storage in a space efficient and cost efficient manner. This paragraph follows the paragraph describing the way in which the pouches are manufactured and precedes the paragraph in which it is disclosed how the pouches are placed into a carton. One skilled in the art reading the specification would understand that the step of folding in a space efficient manner could be undertaken between the steps of forming the different pouches and placing the folded pouches into a carton. Hence, claim 33 (former claim 1) is based on the written description. Reconsideration and withdrawal of the § 112, first paragraph, rejection are respectfully requested.

Claim 32 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The examiner contends that the use of the phrase "arranged substantially transverse" is vague because it is not clear which along which axis and in what direction the pouches should be arranged. Claim 32 has been amended to clarify the axis along which the pouches are arranged. As such, Applicant respectfully contends that the rejection of claim 32 as indefinite is now moot. Reconsideration and withdrawal of the § 112, second paragraph, rejection are respectfully requested.

Claims 1-16, 22, 27, 30-32 are rejected under 35 U.S.C. § 103(a) as being obvious over Kaufman (U.S. Patent No. 2,835,596) in view of Davy (U.S. Patent No. 3,199,756). Claims 17-20 are rejected under 35 U.S.C. § 103(a) as being obvious over Kaufman and

Davy and further in view of Warp (U.S. Patent No. 3,194,124). Applicant respectfully traverses the 103(a) rejections.

Applicant respectfully contends that claim 1 is not obvious over Kaufman in view of Davy because neither Davy nor Kaufman clearly show pleats formed at either end of the pouch. Although the Examiner has referred to pleats being visible in Figure 1 of Kaufman, Applicant respectfully submits that pleats are not visible in the figure 1 and are not described anywhere in the specification. Further, there is no reference to incorporating pleats so that the pouch adopts a generally brick shaped configuration. Figure 1 in fact shows a shape with bowed sides.

By providing pleats at each end and on each side of the pouch, the additional quantity of packing material and the stiffness thereof causes the pouch to naturally adopt a stable brick shaped configuration when sealed. The pleated structure tends to preserve this configuration in whatever position the pouch is arranged. The shapes shown in Kaufman and Davy have roughly flat sides, but in the case of Kaufman, the flat sides appear to be simply because the pouch has been placed on a flat surface. When arranged in a different position, for example with its flat surfaces upright, there is no tendency for the pouch to maintain a brick shaped configuration, so that the pouch will be deformed exposing the contents to the possibility of damage.

Further, the present stable brick shaped pouches are useful when the pouches are being removed one after the other from the carton. When one or more pouches have been removed, the remaining pouches are no longer supported by the removed pouches. However, their brick shaped configuration forms a naturally stable structure which prevents them from falling, thereby further preventing damage to the contents.

It is noted that the pouches are not connected in a strip in Kaufman. The Examiner contends that this would be derivable from Davy. Applicant respectfully disagrees with this contention. In particular, when the goods are fragile, the skilled person would be concerned that a connected strip of pouches would cause problems during removal of pouches from the carton, as the user has to exert some force on the strips to detach them, for example at the perforations. This would dissuade the person skilled in the art from adopting the strip configuration of Davy and applying it to the packaging of Kaufman. Applicant has discovered the unexpected result that, when pleats are used, satisfactory separation of the pouches from one another during use can be achieved without resulting in damage of products in unopened pouches.

Concerning claim 30, the Examiner argued that the products of the prior art might well be breakfast cereal. Even if a skilled person could be aware of strips of pouches from art such as Kaufman and Davy, Applicant respectfully submits that the skilled person would not apply this technology to the cereal packet art.

Applicant respectfully submits that it is well established in U.S. law that what could have been done in the prior art is not evidence of obviousness without a showing of motivation to make such a modification.

Applicant finds that the modification gives rise to the advantage that each individual cereal serving can be maintained fresh until it is required for use. Each pouch can be opened to supply the serving it contains without opening any of the other pouches which accordingly remain fresh. The problems of settling of contents so that the quality thereof varies during the use of the entire packet is also overcome, as each pouch contains essentially the same mixture.

Applicant also respectfully contends that claim 3 defines an additional inventive feature. The concertina configuration provides, at the end of each strip, a method of supporting each pouch in the vertical direction (by the strip connecting the pouch to the pouch above or below it) and in a horizontal direction (by interaction with the walls of the pack and with adjacent pouches in the same layer). This provides an improvement over unsupported pouches shown in Figure 5 of Kaufman. Although the concertina configuration is shown in Figure 5 of Davy, no attention is drawn in the document to the advantages of using this configuration for supporting bags of brittle goods. Davy would not provide the skilled person with a motivation for modifying the teaching of Kaufman to include this feature.

Applicant respectfully asserts that for the above reasons stated, the claims are not obvious over Kaufman in view of Davy. Applicant also respectfully contends that the claims are not obvious over Kaufman in view of Davy and in further view of Warp, because Warp only provides a method of making perforations, and does not provide any further teachings that can be combined with Kaufman and Davy to overcome the deficiencies noted above. Reconsideration and withdrawal of the § 103(a) rejections are respectfully requested.

As all grounds of objection and rejection have been addressed and overcome, entry of this Amendment and issuance of a Notice of Allowance of the claims, as now presented, are respectfully solicited.

In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (000025-00032). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, Applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely.

Any fees due are authorized above.

Respectfully submitted,

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